

**San Francisco Bay Regional Water Quality Control Board**

***Notice of Enforcement for Late Annual Report***

You have until **April 1, 2013** to act, or face additional administrative civil liability.

Questions? Contact David Williams at (510) 622-2373 or [dwilliams@waterboards.ca.gov](mailto:dwilliams@waterboards.ca.gov).

This is a notice of enforcement for a late report violation with an offer to settle the violation through our Expedited Payment Program by paying a penalty of \$3,200. The late report violation is for the failure to submit a 2011-12 Annual Report by July 1, 2012, as required by the State Water Resources Control Board General Permit for Stormwater Discharges Associated with Industrial Activities, Order No. 97-DWQ, NPDES No. CAS000001 (hereinafter "General Permit").

On July 24, 2012, we sent a courtesy reminder that the Annual Report required by the General Permit was past due and subject to enforcement. We asked for submittal of the report by August 10, 2012, to avoid enforcement. We did not receive the report. Because of this, we inspected your facility on October 17, 2012, and February 4, 2013 (Inspection Reports enclosed). During the inspections, Water Board staff reminded you again of the need to submit the Annual Report. While we appreciate efforts that you have made to improve compliance with General Permit requirements between these inspections, and have factored your efforts into our considerations, we have still not received your Annual Report.

Therefore, we are sending this notice of violation and offer to settle the late report violation. **You have three options for responding to the offer:**

- A. **Accept the Enforcement Settlement Offer by submitting your annual report and agreeing to pay a settlement of \$3,200** through the Expedited Payment Program. This is the fastest and most certain way to get closure on this enforcement action. If you choose this option, submit your annual report and sign and submit the Acceptance and Waiver form attached to the accompanying Enforcement Settlement Offer letter, by April 1, 2013. The Waiver form provides submittal instructions. Do not submit payment until receiving an invoice with payment instructions.
- B. **Contest the annual reporting violation** by submitting in writing the basis for the challenge with supporting evidence. For example, evidence such as a certified mail receipt may show that the Annual Report was submitted on time or evidence such as a Notice of Termination (submitted in accordance with the General Permit) may show that the facility is no longer subject to the requirements of the General Permit. If this option is selected, the challenge contesting the violation must be received by April 1, 2013.

Challenges will be reviewed. If accepted, we will provide a written confirmation that the violation of the General Permit has been retracted and that this enforcement action has been terminated. If we do not agree, we will pursue additional penalties for costs incurred up to \$10,000 per day, as discussed further in the accompanying Early Settlement Offer letter. To avoid the possibility of additional penalties, we urge you to contact David Williams (contact information above) as soon as possible so we can assist if you have a valid challenge.

- C. **Reject the Enforcement Settlement Offer** by not responding or submitting a written rejection to the offer by April 1, 2013. In either case, we will pursue penalties of up to \$10,000 per day, as discussed further in the Early Settlement Offer letter.

**San Francisco Bay Regional Water Quality Control Board**

March 1, 2013

Golden Gate Petroleum  
Attn: Mitch Carter  
1340 Arnold Drive, Suite 231  
Martinez CA, 94553

By Certified Mail  
No. 7012 2210 0000 4646 3442  
WDID No: 2 43I011737

**Enforcement Settlement Offer to Participate in Expedited Payment Program for Failure to Submit a 2011-12 Annual Report by July 1, 2012, as Required by State Water Resources Control Board General Permit for Stormwater Discharges Associated With Industrial Activities, Order No. 97-DWQ, NPDES No. CAS000001**

**Facility Name: Golden Gate Petroleum**  
**Facility Address: 905 Stockton Ave., San Jose CA 95110**

Dear Mitch Carter:

This letter provides notice of a late annual report violation with an offer to settle the matter through our Expedited Payment Program by paying a penalty of \$3,200. It also transmits reports of our inspections of your facility (see enclosed Inspection Reports).

- We hereby notify Golden Gate Petroleum (hereinafter "Permittee") of the alleged violation of the State Water Resources Control Board's General Permit for Stormwater Discharges Associated with Industrial Activities (hereinafter "General Permit"), the California Water Code, and the Federal Clean Water Act, for the failure to submit a 2011-12 Annual Report by July 1, 2012
- The Permittee has an opportunity to settle the alleged violation through expedited payment (hereinafter "Expedited Payment Program"). The Expedited Payment Program addresses liability that may be assessed pursuant to Water Code section 13385.

**NOTICE OF VIOLATION**

The Permittee has violated section B.14 of the General Permit by failing to submit its 2011-12 Annual Report by July 1, 2012, to the San Francisco Bay Regional Water Quality Control Board's (hereinafter "Regional Water Board").

**STATUTORY LIABILITY**

Pursuant to Water Code sections 13385(a)(2) and 13385(c)(1), the Permittee is subject to discretionary administrative civil liabilities of up to \$10,000 for each day in which each violation occurs (i.e., each day the Permittee fails to submit an annual report after July 1 of each year). These discretionary administrative civil liabilities may be assessed by the Regional Water Board,

beginning with the date that the violation(s) first occurred. Alternatively, the Regional Water Board may refer such matters to the Office of the Attorney General for prosecution and seek up to \$25,000 per violation per day pursuant to Water Code section 13385(b)(1).

### **MAXIMUM ADMINISTRATIVE CIVIL LIABILITY**

The Regional Water Board has not received the Permittee's 2011-2012 Annual Report by March 1, 2013. As of the date of this letter, the statutory maximum administrative civil liability that may be imposed for the Permittee's failure to file an annual report by July 1, 2012, is \$2,430,000 (243 days of violation x \$10,000).

### **PROPOSED ADMINISTRATIVE CIVIL LIABILITY**

We are making a proposal to settle the alleged violation through the Expedited Payment Program for the following amount: \$3,200 (hereinafter "Expedited Payment Amount"). This Expedited Payment Amount is based on a statutory minimum penalty of \$1,000 plus Regional Water Board costs to bring about compliance. This proposed amount is further detailed below.

In general, the Regional Water Board must consider the factors set forth in Water Code section 13385(e) when determining the amount of discretionary administrative civil liability. In May 2010, the State Water Resources Control Board (hereinafter "State Water Board") Water Quality Enforcement Policy became effective. This Enforcement Policy establishes a methodology for assessing administrative civil liability consistent with the factors in Water Code section 13385(e).

Using the Enforcement Policy methodology, a formal administrative civil liability for the alleged violation would be approximately \$15,400, plus additional Regional Water Board staff costs to prepare and process the action, which may be as high as \$5,000 - \$7,000. However, the Expedited Payment Program offers the opportunity to settle the alleged violation for \$3,200 based on the following:

- Water Code section 13399.33(c) requires a minimum penalty of \$1,000 for the failure to submit an annual report in accordance with section 13399.31.
- An additional \$100 (ten percent of the minimum penalty) due to history of late submittal of annual reports.
- Regional Water Board has incurred \$2,100 in staff costs to respond to the alleged violation (e.g., preparing and sending notices to the Permittee, verbal and/or written correspondence, site inspections, etc.).

### **CONDITIONAL OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM**

The Permittee can avoid a formal enforcement action (discussed above) and settle the alleged violation by participating in the Regional Water Board's Expedited Payment Program. Details of the proposed settlement are described below, as well as in the "Acceptance of Conditional Resolution and Waiver of Right to Hearing, [Proposed] Order" (hereinafter "Acceptance and Waiver") enclosed herewith.

The Expedited Payment Program does not address liability for any violation that is not specifically identified in this Enforcement Settlement Offer.

**OPTIONS FOR RESPONDING TO THE EXPEDITED PAYMENT PROGRAM OFFER:**

**Choice A – ACCEPT THE OFFER**

If the Permittee accepts this offer, please submit your annual report on or before April 1, 2013, and complete and return the Acceptance and Waiver enclosed herewith on or before April 1, 2013, by certified mail, return receipt requested addressed as follows:

San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
Attn: David Williams

Further, the Permittee must also submit the \$3,200 administrative civil liability by cashier's check or by certified check made payable to the "State Water Resources Control Board" in accordance with an invoice that will be sent for the payment. The invoice will specify the payment due date, which will be within about 60 days after we receive the Permittee's Acceptance and Waiver. Failure to pay the administrative civil liability within the required time period may subject the Permittee to further liability. Note that signing the Acceptance and Waiver will also make this notice and offer a part of the Regional Water Board files and available to the public.

**Choice B – CONTEST THE ALLEGED VIOLATION**

If the Permittee wishes to contest the annual reporting violation, the challenge must be received on or before April 1, 2013. Please identify, in writing and send by certified mail to the address above with a return receipt requested, the basis for the Permittee's challenge (factual error, affirmative defense, etc.). The Regional Water Board enforcement staff will evaluate that basis and make one of the following determinations: If the Regional Water Board staff determines that the alleged annual reporting violation is not supported, no further action will be taken against the Permittee for that violation, and the Permittee will be notified of that determination. If the Regional Water Board staff determines that the contested violation as alleged is meritorious, the Permittee should expect that a formal enforcement action will be pursued and that the Permittee will receive notice of any deadlines associated with that action. In a formal enforcement action, the liability amount sought and/or imposed may significantly exceed the liability amount set forth in this Conditional Offer. Moreover, the cost of enforcement is a factor that can be considered in assessing the liability amount.

**Choice C – REJECT OFFER**

If the Permittee chooses to reject the Regional Water Board enforcement staff's offer and/or does not complete and return the Acceptance and Waiver, the Permittee should expect that Regional Water Board enforcement staff will pursue a formal enforcement action and the Permittee will receive notice of any deadlines associated with that action. As previously stated, in such an action, the liability amount sought and/or imposed may significantly exceed the liability amount set forth in this Conditional Offer.

The Permittee should also note that in the event Regional Water Board enforcement staff pursues a formal enforcement action for the annual reporting violation, the Regional Water Board enforcement staff will review its records to determine whether the Permittee has previously failed to submit an annual report as required by the General Permit, and whether the Permittee has repeatedly failed to comply with the requirement. The Regional Water Board enforcement staff will consider any such previous failures when assessing the Permittee's liability amount. This consideration may result in the liability amount being sought and/or imposed to significantly exceed the liability amount set forth in this Conditional Offer.

#### **CONDITIONS FOR REGIONAL WATER BOARD ACCEPTANCE OF RESOLUTION**

Should the Permittee participate in the Expedited Payment Program, Regional Water Board enforcement staff will publish the acceptance of proposed settlement in accordance with federal regulations, which entails providing at least 30 days for public comment on any settlements addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)).

If we receive no comments within the 30-day notice period, the Regional Water Board's Executive Officer may act to formally endorse the Acceptance and Waiver as a stipulated order assessing the uncontested penalty amount pursuant to Water Code section 13385(c)(1), as described under the heading "Statutory Liability" herein.

If, however, significant comments are received in opposition to the settlement, this offer may be withdrawn. If the Regional Water Board's offer is withdrawn, the Permittee will be advised of that withdrawal, and the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. After the Regional Water Board's offer and the Permittee's waiver are deemed withdrawn, the unresolved violation will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional or State Water Board. For such a liability hearing, the Permittee understands that this Enforcement Settlement Offer, and Acceptance and Waiver endorsed by the Permittee, shall be treated as confidential settlement communication, and the Permittee shall not use them as evidence in that hearing.

Any questions about this Conditional Offer and/or the Acceptance and Waiver, should be directed to David Williams at (510) 622-2373 or by email at [dwilliams@waterboards.ca.gov](mailto:dwilliams@waterboards.ca.gov).

Sincerely,



Thomas E. Mumley  
Assistant Executive Officer

#### **Enclosures**

- Acceptance of Conditional Resolution and Waiver of Right to Hearing
- Inspection Reports

**San Francisco Bay Regional Water Quality Control Board**

**ACCEPTANCE OF CONDITIONAL RESOLUTION  
AND WAIVER OF RIGHT TO HEARING; ORDER**

**LATE SUBMITTAL OF 2011-12 ANNUAL REPORT IN VIOLATION OF  
STATE GENERAL PERMIT FOR STORMWATER DISCHARGES  
ASSOCIATED WITH INDUSTRIAL ACTIVITIES**

**Facility Name: Golden Gate Petroleum (WDID No. 2 43I011737)**

**Facility Address: ~~1340 Arnold Drive, Suite 231, Martinez CA, 94553~~**

**905 Stockton Ave., San Jose CA 95110**

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (hereinafter "Acceptance and Waiver") to the San Francisco Bay Regional Water Quality Control Board ("Regional Water Board"), Golden Gate Petroleum (hereinafter "Permittee") hereby accepts the "Offer to Participate in the Regional Water Board's Expedited Payment Program for Annual Reporting Violations" (hereinafter "Conditional Offer") and waives the right to a hearing before the Regional Water Board to dispute the allegation of violation.

The Permittee agrees that the Enforcement Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Regional Water Board to assert jurisdiction over the alleged violations through its Assistant Executive Officer. Permittee agrees to perform the following:

- **Submit a 2011-12 Annual Report by April 1, 2013**
- and
- **Pay discretionary administrative civil liability as authorized by California Water Code section 13385(c)(1), in the sum of \$3,200 (hereinafter "Expedited Payment Amount") by cashier's check or by certified check made payable to the "State Water Resources Control Board" for deposit into the State Water Pollution Cleanup and Abatement Account, which shall be deemed payment in full of any civil liability pursuant to California Water Code section 13385 that otherwise might be assessed for the violations described in the Enforcement Settlement Offer.**

The Permittee understands that this Acceptance and Waiver waives its right to contest the allegations in the Enforcement Settlement Offer and the civil liability amount for such violations.

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation not specifically identified in the Enforcement Settlement Offer.

Upon execution by the Permittee, the Acceptance and Waiver shall be returned to the following:

**San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
Attn: David Williams**

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional Water Board to publish notice of and provide at least thirty (30) days for public comment on any proposed resolution of an enforcement action. Accordingly, this Acceptance and Waiver, prior to being formally endorsed by the Executive Officer of the Regional Water Board, will be published as required by law for public comment.

If no comments are received within the notice period that cause the Executive Officer of the Regional Water Board to reconsider the Expedited Payment Amount, the Executive Officer will formally endorse this Acceptance and Waiver. Resolution of these alleged annual reporting violations by the Regional Water Board will preclude Regional Water Board action for the alleged annual reporting violation in the Enforcement Settlement Offer.

The Permittee understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Water Board to resolve the violations set forth in the Enforcement Settlement Offer may be withdrawn by the Assistant Executive Officer. If the Regional Water Board's offer is withdrawn, the Permittee will be advised of the withdrawal, and the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. After the Regional Water Board's offer and the Permittee's waiver are deemed withdrawn, the unresolved violations will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Water Board or the State Water Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver endorsed by the Permittee shall be treated as a settlement communication, and neither the Permittee nor Regional Water Board staff shall use it as evidence in that hearing.

The Permittee understands that once this Acceptance and Waiver is formally endorsed by the Executive Officer of the Regional Water Board and an order number inserted, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. The Permittee shall pay the Expedited Payment Amount by a cashier's check or certified check for the full amount made payable to the "State Water Resources Control Board" for deposit into the State Water Pollution Cleanup and Abatement Account. The payment will be submitted in accordance with an invoice for the payment. Payment will be due on or about 30 days of endorsement of the "Acceptance and Waiver" by the Executive Officer of the Regional Water Board.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Acceptance and Waiver.

Golden Gate Petroleum  
(Permittee) \*Make corrections as appropriate

By: BH Wolfe  
(Signed Name)

4/4/13  
(Date)

BH Wolfe  
(Printed or typed name)

VP  
(Title)

**IT IS SO ORDERED** PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

By: \_\_\_\_\_

Bruce H. Wolfe  
Executive Officer

San Francisco Bay Regional Water Quality Control Board

\_\_\_\_\_  
(Date)